

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

WENDELL PETTRY,

Petitioner,

v.

CIVIL ACTION NO. 5:07-cv-00270

WARDEN THOMAS L. MCBRIDE,

Respondent.

**JUDGMENT ORDER**

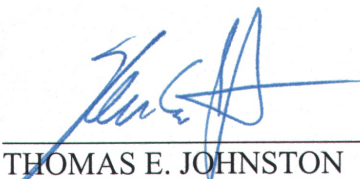
By Standing Order entered on August 1, 2006, and filed in this case on May 7, 2007, this action was referred to United States Magistrate Judge Mary E. Stanley for submission of proposed findings and a recommendation [“PF&R”]. Magistrate Judge Stanley filed her PF&R on July 5, 2007 [Docket 6]. In that filing, the magistrate judge recommended that this Court: (1) find that Petitioner has not demonstrated that his Petition was timely filed and that the claims contained in his Petition have not been properly exhausted in state court; (2) deny without prejudice Petitioner’s section 2254 Petition [Dockets 1 and 3]; and (3) remove this matter from the Court’s docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, objections to Magistrate Judge Stanley’s PF&R were due by July 20, 2007, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). Petitioner has failed to object to the PF&R.

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge Stanley, the Court adopts the findings and recommendations contained therein. Accordingly, the Court hereby **DENIES WITHOUT PREJUDICE** Petitioner's section 2254 Petition [Dockets 1 and 3] because he has not demonstrated that his Petition was timely filed and because the claims contained in his Petition have not been properly exhausted in state court.

The Court **DIRECTS** the Clerk to remove this matter from the Court's docket. The Clerk is further directed to mail a certified copy of this Judgment Order to all counsel of record, Petitioner, *pro se*, and a copy to Magistrate Judge Stanley.

ENTER: September 28, 2007



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE